

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Requests for Waiver of Various Petitioners)	PS Docket No. 12-94
to Allow the Establishment of 700 MHz)	PS Docket No. 06-229
Interoperable Public Safety Wireless)	
Broadband Networks)	

To: Chief, Public Safety and Homeland Security Bureau

COMMENTS OF THE OAC

The State of Oregon hereby files these comments in response to the Public Safety and Homeland Security Bureau's (the "Bureau") Request for Comment on the transition process for 700 MHz public safety broadband waiver recipients.¹

**I. The Commission Should Extend our Existing Lease as a Waiver
 Recipient as Part of the Transition of the Spectrum to FirstNet.**

The State of Oregon is an active member in the Public Safety Spectrum Trust (PSST) Operator Advisory Council (OAC). The membership of the OAC consists of 21 jurisdictions that have been granted waivers by the Commission to pursue early deployment of public safety broadband networks using the 10 MHz of public safety broadband spectrum previously allocated in the 700 MHz band. Oregon has entered into a Commission-approved long-term *de facto* transfer lease with the Public Safety Spectrum Trust ("PSST"), the entity that holds the existing

¹ Public Notice, "Public Safety and Homeland Security Bureau Seeks Comment on transition Process for 700 MHz Public Safety Broadband Waiver Recipients," DA 12-555 (rel. April 6, 2012).

10 MHz nationwide public safety broadband license, Call Sign WQHW226.² This Lease allows Oregon to make use of the spectrum statewide.

Pursuant to the Waiver and Lease, Oregon has made significant investment in business planning and conceptual design both in time and capital since May 2010. All work has proceeded in close cooperation with the Bureau and the PSST, as well as with NTIA, PSCR and OEC. Oregon is in the process of developing operational public safety broadband networks. These networks will support FirstNet implementation by providing valuable lessons learned, as well as proof of concept design criteria, that will be invaluable to the development of the FirstNet nationwide build out. Our partnership and outreach effort to our stakeholder communities will build support for the FirstNet deployment.

Oregon respectfully requests that with its transition of Call Sign WQHW226 to FirstNet, the FCC should extend Oregon's current lease (currently set to expire on September 2, 2012) for an additional two-year period, to allow Oregon's ongoing efforts to continue. FirstNet is not expected to be established for another two years or more. During this transition period, First Net will not be capable of undertaking the system planning, procurement, and other functions essential for deploying a network. At a minimum, if the Commission chooses not to continue the Leases for a full two years, the Commission should still transition all of the Leases to FirstNet with an extension of the existing term to remain in effect until such time as FirstNet is operational, and has adopted technical and interoperability standards.

In extending the Lease and transitioning it to FirstNet, the Commission should also make clear that the Lease includes the additional 10 MHz of spectrum (the D Block spectrum) that

² See Public Notice, "Public Safety and Homeland Security Bureau Approves Long Term De Facto Transfer Spectrum Lease Agreements Filed by Conditional Waiver Recipients to Establish 700 MHz Interoperable Public Safety Wireless Broadband Networks," DA 10-1687 (rel. Sept. 2, 2010).

Congress has allocated to the public safety national broadband network.³ The legislation reassigning the D Block to public safety envisions construction of a single network using the full 20 MHz of spectrum. Accordingly, the full 20 MHz of spectrum should be included under the lease.

In continuing to operate under the Lease, Oregon will continue to be subject to the existing interoperability and technical requirements established by the Commission, with the understanding that the lessees will abide by future requirements issued by the Commission and/or adopted by FirstNet. Oregon expects to work with FirstNet to ensure our state is prepared for pending discussions in 2013 on the development of the NPSBN in Oregon.

II. The Commission has Extensive Authority to Extend our Lease in Transitioning the License to FirstNet.

The extension of the Lease requested herein is fully consistent with the Spectrum Act, and in fact further promotes the intent of Congress in the deployment of a nationwide public safety broadband network by providing FirstNet with invaluable experience and information gained from the State of Oregon – we offer a diverse geographic test bed to predict the success of FirstNet in metropolitan, urban, or rural settings. Under the legislation establishing FirstNet, the Commission is required to “reallocate and grant a license to the First Responder Network Authority for use of the 700 M Hz D block spectrum and existing public safety broadband spectrum.”⁴ While the legislation makes clear that the Commission is required to “implement and enforce this title as if this title is part of the Communications Act,”⁵ the legislation is silent

³ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §6101 (2012) (“Spectrum Act”).

⁴ Spectrum Act §6201 (a).

⁵ Spectrum Act § 6003.

on what to do with the existing leases under the transition to FirstNet. This leaves it to the Commission, as the expert agency charged with implementing the Communications Act, to fill the “gap” by addressing all issues relating to the leases in effectuating the assignment of the license to FirstNet.⁶ As part of the Congressional scheme set forth in the new legislation, the Commission has full authority to extend and continue the lease with Oregon as part of the process of transitioning the public safety license to FirstNet.⁷

Indeed, the legislation specifically requires the Commission to “take all actions necessary to facilitate the transition of the existing public safety broadband spectrum.”⁸ The Commission is further charged to “take any action necessary to assist the First Responder Network Authority in effectuating its duties and responsibilities.”⁹ Thus, it is clear that under the Congressional scheme the Commission is empowered to address the lease as part of the assignment of the license and the Commission must take such action.

In making its determination on whether and how to continue the lease as part of the transition process, the Commission’s decision should be taken in light of what best fulfills the public interest. For the reasons set forth in these comments, the public interest warrants a two year extension of the leases, with the addition of the D Block, as part of the license assignment. It is not realistic to expect the FirstNet Board to be in a position to adequately address the leases by September of this year when they will expire. Under these circumstances the Commission must act now to fulfill its mandate under the statute. Unless the Commission extends the leases

⁶ *Southern Company v. MCI* 293 F.3d 1338, (Eleventh Cir., 2002), at 1343; *Also see Chevron U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-45, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984).

⁷ As the expert agency charged with interpreting the Communications Act the Commission is entitled to deference in making policy decisions in the course of implementing the Communications Act. *See Chevron, supra*.

⁸ Spectrum Act §6201(c).

⁹ Spectrum Act §6213.

as part of the FirstNet license assignment, Oregon will be left in a state of uncertainty with regard to developing a realistic plan in support of, and in conjunction with FirstNet. In a worst case scenario, the lease will expire in September 2012 defeating the test bed approach recognized by the Commission to be in the public interest during its approval of the waivers. Accordingly, the Commission should extend the leases as part of the transition of the license to FirstNet.

III. Continuing the Leases Will Bring Benefits Vital to the Success of FirstNet.

It is critical to the success of FirstNet to continue support for the progress being made by Oregon and other Waiver Recipients with the understanding that these 21 early builders are the initial phase of a nationwide effort. Oregon has committed extensive time and resources to the planning and development of a public safety broadband network. These initiatives are yielding positive results, and are providing Oregon a wealth of valuable information about best practices and lessons learned for broadband wireless deployments—information that will be critical to the success of FirstNet. Curtailing the work at this juncture will prematurely and unnecessarily end the ability to learn from these efforts, and will potentially frustrate, at least for a period of time, the progress that these early deployments represent towards achieving a successful nation public safety broadband network.

Accomplishments of efforts to date include:

- Development of regional and/or statewide plans and governance structures;
- Generating enthusiastic support with local, State and regional public safety agencies;
- Early planning of interoperability requirements that can be used as case studies for FirstNet;
- Experience in collaborating with industry and local jurisdictions in building LTE systems;

- Outreach efforts to first responders who will serve as the FirstNet user base;
- Experience navigating through political and legal issues in planning and implementing these networks;
- Developing best practices for ensuring that service meets operational needs, including information regarding operational impacts, priorities and unique security requirements.
- Obtaining significant funding commitments to help build out respective portions of the national network.

Oregon's continued effort in these areas will help mitigate risks to FirstNet. FirstNet will have the opportunity to analyze the metrics derived from Oregon's pilot project demonstration, which is scheduled to take place during the transition of the PSST spectrum to FirstNet in August of 2012. Oregon's efforts are consistent with FirstNet's goals in deploying an interoperable nationwide public safety broadband network (NPSBN) and Oregon looks forward to working closely with FirstNet, once established, to ensure interoperability and integration of the early deployments with the future national network.

As the builder and operator of the nationwide public safety network, FirstNet will benefit by leveraging the Waiver Recipients and their work to date as the first rollouts of the nationwide network. Transitioning the leases with the issuance of the license as requested herein would meet with the overarching policy of the Spectrum Act by retaining for FirstNet the ability gain the greatest benefit from the ongoing work of the Waiver Recipients. Accordingly, it would serve no valid or functional purpose to permit any of the leases to expire against the will of the Lessee.

Accordingly, the Commission should renew the Leases for an additional two-year period and assign the Leases to FirstNet along with the transfer of the license from the PSST to

FirstNet. Additionally, as noted above, the Commission should make clear that the Leases cover both the existing 10 MHz of spectrum licensed to the PSST under station WQHW226, as well as the additional 10 MHz of spectrum that Congress has allocated for the NPSBN.

CONCLUSION

Wherefore, the Commission should take action in accordance with the comments set forth above, to extend the Oregon Lease as part of the transition of the spectrum to FirstNet.

Respectfully submitted,

Director, Oregon Department of Transportation

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